EX PARTE OR LATE FILED

September 6, 2001

Ms. Magalie Roman Salas, Attorney at Law
Secretary, Federal Communications Commission
445-12th Street Lobby

HAND DELIVERED
(to designated counter at TW-A325)

Re: Phase 2 of the Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers. (DA 01-1403)

Ex Parte Presentation in Docket 01-199
(An original and one copy having been presented to the Secretary and a copy presented to Commissioner Copps' Office)

Dear Secretary Salas:

The purpose of this letter is to describe the *ex parte* presentation made to Paul Margie in Commissioner Copps's office. The presentation was made on September 5, 2001, on behalf of the National Association of State Consumer Utility Advocates (NASUCA) as represented by its Executive Director, Charles Acquard, and its consultant attorney, Kathleen F. O'Reilly.

It was explained that NASUCA is opposed to the Commission's further repeal of accounting and reporting rules or the elimination of any of the new accounting and reporting rules set forth in the Attachment to the Public Notice issued on June 8, 2001. Copies of various comments filed by NASUCA in this proceeding were presented and it was explained that:

- The standard for review is the statutory *mandate* of 47 U.S.C. § 161 (a). The Commission does not have the discretion to disregard that standard. Given that there is no "meaningful economic competition" that warrants elimination of any of the currently applicable accounts in the Attachment as "no longer in the public interest," the record in this proceeding does not support any such elimination.

- Meaningful competition does not exist for local residential ratepayers in this country. At best, some 2%-3% of such customers have even a choice of local providers. Even then, for some customer classes and/or services, a distinction must be drawn between market behavior that is largely reflective of an oligopoly rather than "meaningful economic competition."

- The millions of consumers represented by NASUCA members would be seriously disadvantaged by the such repeal or the failure to adopt the new accounting rules. As consumer advocates participating in state proceedings on a day-to-day basis (and less frequently in federal proceedings), NASUCA members must rely on the specific and discreet revenue, cost, investment, etc., information identified in these accounts. That

ARMIS data is typically key evidence cited by NASUCA members and their consultants in the representation of the residential ratepayer interest in innumerable proceedings such as those related to Universal Service, Sec. 271 authority, UNE pricing, pole attachment fees, the setting of depreciation rates, revenue requirements, etc.

- It is that level of account detail that is also necessary to identify whether the rates of noncompetitive services are providing improper subsidies to competitive services as expressly prohibited by Sec. 254 (k) of the Act. Typically it is captive residential ratepayers who bear the high price of such disallowed subsidies. Only with such data collected can regulators and consumer advocates ensure that costs included in the definition of Universal Service, for example, do not shift to residential ratepayers more than a reasonable share of the costs of the facilities used to provide such services, including the cost of the loop. That protection was formally recognized for the first time in the Telecommunications Act of 1996 (Act). Its goal would be crippled and rendered largely meaningless in the absence of maintaining rules requiring the reporting of such data *as well as* the strict enforcement of such rules.

- With or without such regulatory mandate that ARMIS data be collected, carriers must for other standard business purposes collect and analyze the same information required in these rules. The collection of such data is nothing more than a standard good business practice recognized throughout the business world, i.e., without such information carriers could not track profit margins, plant investment and maintenance needs, necessary work force levels, inventory, etc. Thus, there is no substantial burden in providing that same data to the Commission, particularly when such data can now be filed electronically. Once a basic format is designed to comply with these accounting procedures, the cost of ongoing collection and reporting is *de minimus*. Furthermore, the number of accounts encompassed in the Commission rules is but a small fraction of those maintained by these carriers. In any event, the claimed cost savings to the carriers if such account rules were eliminated is minuscule, especially so in light of the ILECs' multi billion dollar operations and record profits. More importantly, those meager compliance cost savings are far outweighed by the cost to ratepayers if such rules were *not* in place and enforced.

- To achieve the federal Act's aim of competition, regulators at the federal and state level need such account information reported in distinct not aggregated fashion. That information is indispensable to complying with the statutory standards that apply to proceedings related to Universal Service, UNE pricing, Sec. 271 authority, depreciation rates, pole attachment fees, etc.

- Many states do not independently collect such data and do not have the resources (and in some instances statutory authority) to do so. This reality was known at the time the federal Act was debated and enacted. The Act clearly envisioned a partnership between the federal government as the collector of such data, and state regulators who must also rely on such data. Neither the language of the Act nor its legislative history suggest a Congressional intent to require the states to begin to collect that data independently. The

partnership envisioned in the Act, and hailed by its Congressional backers, would be rendered meaningless if the Commission were now to attempt shifting that role to the states.

- Incumbent providers have long proclaimed that the movement toward global markets is a major impetus for the evolution from cost based regulation to relaxed (price cap) regulation...and ultimate deregulation. That same rationale should compel the maintaining of *federal uniform standards*. Such federal minimum standards and joint federal/state regulatory partnership are consistent with the goal of a national network; one that is necessary both for our domestic economy needs and our nation's position in that global economy. This was a *federal* Act and assures a more efficient system than otherwise would be the case with widely varying rules in each state.

- In effectuating responsibilities delegated by Congress, the Commission must maintain detailed accounts if it is to build a record adequate to sustain legal challenges by regulated incumbents. That is true, for example, in establishing revenue requirements adequate to withstand litigation that attacks the rates as unconstitutional confiscation. It is the transparently clear legal strategy of some ILECs to routinely bring such judicial challenges, that compels such a correspondingly defensive strategy by the Commission. Those with the largest stake in ensuring that the revenue requirements are upheld are captive ratepayers.

- Finally, we briefly discussed the issue of special service circuits (commonly known as private lines) in the context of the article in the September 4, 2001 edition of *Communications Daily*. On the face of it, there might not appear to be a clear residential ratepayer stake in this highly contentious dispute between ILECs and CLECs. However, it is indicative of accounting information that is not being reported anywhere, to the potential detriment of residential ratepayers in the revenue requirement process, including the fair allocation of loop costs as required under the federal Act.

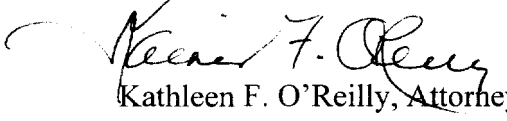
  To our frustration, the myth often continues that residential rates are being "subsidized" when in fact evidence demonstrates the opposite, with an excessive portion of costs (including loop costs) increasing and unfairly being shifted to residential ratepayers. Without specific account information, reliance upon myths rather than facts could be the inappropriate basis for public policy determinations.

  The private line/special services circuits are relevant to the present accounting requirements debate. From an engineering perspective the equipment sold for private lines is identical whether sold as a special services access tariff or as a UNE component. However when sold as a special services access tariff, it is sold at much higher rates (and thus favored by the ILECs that sell the service). When sold as a UNE component, it is at much lower rates (and thus favored by the CLECs purchasing it for business customers that in turn subscribe to such service at huge discounted prices.)

  But for revenue requirement purposes, those large discounts presumptively mean that

residential ratepayers (unable to negotiate such discounts) are paying far more for the identical service being sold at much lower prices to business customers. Private line is an increasingly growing segment of the business world. Currently the Commission does not collect any information on the special services and thus neither knows how many such circuits are even out there, let alone whether such discounted private line rates mean the service is being sold at, above or below cost. It is the absence of such information that handicaps residential ratepayer advocates who seek to ensure that the Act is enforced with respect to the fair allocation of loop costs, etc.

Respectfully submitted,



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On behalf of NASUCA